

Assembly Bill No. 2530

CHAPTER 520

An act to amend Sections 706.034 and 1532 of the Code of Civil Procedure, to amend Section 5235 of the Family Code, to amend Sections 12461 and 12464 of, and to add Section 16582 to, the Government Code, and to amend Section 3088 of the Probate Code, relating to the Controller.

[Approved by Governor September 14, 2004. Filed
with Secretary of State September 14, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2530, Levine. Controller: duties and authority.

(1) Existing law authorizes employers to deduct the sum of \$1 for each payment made pursuant to an earnings withholding order issued to enforce the payment of support obligations.

This bill would instead authorize employers to deduct the sum of \$1.50 for each payment made pursuant to an earnings withholding order issued to enforce the payment of support obligations.

(2) The Unclaimed Property Law governs the disposition of unclaimed property, including the escheat of certain property to the state. The Controller administers property that has escheated to the state. Under existing law, in situations in which specified security interests escheat to the state, the holder of an interest is required to deliver a duplicate certificate regarding that interest to the Controller.

This bill would modify those provisions of law to permit the holder of an interest, rather than delivering a certificate to the Controller, to instead register the securities in uncertificated form in the name of the Controller.

(3) Existing law requires the Controller to submit an annual report to the Governor containing a statement of the funds of the state, its revenues, and the public expenditures during the preceding fiscal year. It is required that this annual report include specified information and that this report and any summary of this report be printed.

This bill would require, instead, that the annual report and summary report be published in an electronic format or printed, as determined by the Controller. It would require the Controller to make printed copies of the reports available upon request.

(4) Existing law requires counties, cities, and other local agencies to make various periodic reports of financial transactions to the Controller, and requires the Controller to compile and publish these reports

annually. Existing law requires that if county, city, or district reports are not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect the Controller shall appoint a qualified accountant to make an investigation and to obtain the required information. Existing law also imposes forfeitures in specified amounts upon an officer of a local agency or a community redevelopment agency who fails or refuses to make and file a required financial report within 20 days after receipt of a written notice of the failure from the Controller.

This bill would provide that any costs incurred by the Controller pursuant to these provisions in compiling the required reports shall be borne by the county, city, or redevelopment agency, and shall be a charge against any unencumbered funds of the county, city, or redevelopment agency. It would provide, however, that any forfeiture may be offset to the extent of the total costs incurred by the Controller.

(5) Existing law requires the Controller to direct and superintend the collection of all money due the state, and to install and operate a uniform state payroll system for all state agencies, with certain exceptions.

The Accounts Receivable Management Act sets forth procedures by which state agencies, departments, and offices establish accounts receivable collections systems.

This bill would authorize the Controller, within the uniform state payroll system, and for each state agency, department, and office, to disregard errors of \$25 or less in individual accounts receivable, if he or she has determined that time and expense will be saved in doing so.

The people of the State of California do enact as follows:

SECTION 1. Section 706.034 of the Code of Civil Procedure is amended to read:

706.034. The employer may deduct from the earnings of the employee the sum of one dollar and fifty cents (\$1.50) for each payment made in accordance with an earnings withholding order issued pursuant to this chapter.

SEC. 2. Section 1532 of the Code of Civil Procedure is amended to read:

1532. (a) Every person filing a report as provided by Section 1530 shall pay or deliver to the Controller all escheated property specified in the report at the same time the report is filed. On and after January 1, 1997, a payment of unclaimed cash in an amount of at least twenty thousand dollars (\$20,000) shall be made by electronic funds transfer pursuant to regulations adopted by the Controller.



(b) The holder of any interest under subdivision (b) of Section 1516 shall deliver a duplicate certificate to the Controller or shall register the securities in uncertificated form in the name of the Controller. Upon delivering a duplicate certificate or providing evidence of registration of the securities in uncertificated form to the Controller, the holder, any transfer agent, registrar, or other person acting for or on behalf of the holder in executing or delivering the duplicate certificate or registering the uncertificated securities, shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of the certificate issued to the Controller for any losses or damages resulting to that person by the issuance and delivery to the Controller of the duplicate certificate or the registration of the uncertificated securities to the Controller.

(c) Payment of any intangible property to the Controller shall be made at the office of the Controller in Sacramento or at another location as the Controller by regulation may designate. Except as otherwise agreed by the Controller and the holder, tangible personal property shall be delivered to the Controller at the place where it is held.

(d) Payment is deemed complete on the date the electronic funds transfer is initiated if the settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If the settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(e) Any person required to pay cash by electronic funds transfer who makes the payment by means other than an authorized electronic funds transfer shall be liable for a civil penalty of 2 percent of the amount of the payment that is due pursuant to this section, in addition to any other penalty provided by law. Penalties are due at the time of payment. If the Controller finds that a holder's failure to make payment by an appropriate electronic funds transfer in accordance with the Controller's procedures is due to reasonable cause and circumstances beyond the holder's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that holder shall be relieved of the penalties.

(f) An electronic funds transfer shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer. Banking costs incurred for the automated clearinghouse debit transaction by the holder shall be paid by the state. Banking costs incurred by the state for the automated clearinghouse credit transaction may be paid by the holder originating the credit. Banking costs incurred for the Fedwire transaction charged to the holder and the state shall be



paid by the person originating the transaction. Banking costs charged to the holder and to the state for an international funds transfer may be charged to the holder.

(g) For purposes of this section:

(1) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, modem, computer, or magnetic tape, so as to order, instruct, or authorize a financial institution to credit or debit an account.

(2) “Automated clearinghouse” means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the holder’s bank account and crediting the state’s bank account for the amount of payment.

(4) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the holder, through its own bank, originates an entry crediting the state’s bank account and debiting the holder’s bank account.

(5) “Fedwire” means any transaction originated by the holder and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the holder debits its own bank account and credits the state’s bank account.

(6) “International funds transfer” means any transaction originated by the holder and utilizing the international electronic payment system to transfer funds, pursuant to which the holder debits its own bank account, and credits the funds to a United States bank that credits the Unclaimed Property Fund.

SEC. 3. Section 5235 of the Family Code is amended to read:

5235. (a) The employer shall continue to withhold and forward support as required by the assignment order until served with notice terminating the assignment order. If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the employer but not received by the obligee. If the employer withheld the support but failed to forward the payments to the obligee, the employer shall be liable for the payments, including interest, as provided in Section 5241.



(b) Within 10 days of service of a substitution of payee on the employer, the employer shall forward all subsequent support to the governmental entity or other payee that sent the substitution.

(c) The employer shall send the amounts withheld to the obligee within the timeframe specified in federal law and shall report to the obligee the date on which the amount was withheld from the obligor's wages.

(d) The employer may deduct from the earnings of the employee the sum of one dollar and fifty cents (\$1.50) for each payment made pursuant to the order.

(e) Once the State Disbursement Unit as required by Section 17309 is operational, the employer shall send all earnings withheld pursuant to this chapter to the State Disbursement Unit instead of the obligee.

SEC. 4. Section 12461 of the Government Code is amended to read: 12461. The Controller's annual report shall include:

(a) General Purpose Financial Statements prepared in accordance with Section 12460 and "Generally Accepted Accounting Principles."

(b) Tabular statements showing:

(1) The amount of each appropriation for the preceding fiscal year, the amounts expended, and the balance, if any.

(2) The revenues and cost of government of the state for the preceding fiscal year, classified in the manner and detail that the Controller may determine.

(3) The receipts, disbursements, and closing balances of each fund in the State Treasury for the preceding fiscal year.

(4) Variances between budgetary-legal statements prepared pursuant to Section 12460 and any statements prepared under "Generally Accepted Accounting Principles."

The Controller may also publish a condensed summary of the annual report.

The reports required by this article shall be published in an electronic format or printed, as determined by the Controller. The Controller shall make printed copies of the reports available upon request.

SEC. 5. Section 12464 of the Government Code is amended to read:

12464. (a) If the county, city, or district reports are not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect, the Controller shall appoint a qualified accountant to make an investigation and to obtain the information required. The accountant appointed shall report to the Controller the results of investigation, and a copy shall be filed with the legislative body of the county, city, or district, the accounts of which were investigated. If a similar investigation has to be made of the accounts of any county, city, or district, for two successive years, a certified copy of

the results of the investigation last made shall be transmitted to the grand jury of the county that was investigated or in which the city or district investigated is situated, or, if the district is situated in more than one county, in the county in which any portion of the district is situated.

(b) Any costs incurred by the Controller pursuant to subdivision (a), including contracts with, or employment of, certified public accountants or public accountants, in compiling a financial report pursuant to Section 12463 or 12463.3 shall be borne by the county, city, district, or redevelopment agency, and shall be a charge against any unencumbered funds of the county, city, district, or redevelopment agency. Any forfeiture imposed by Section 53895 or 53895.5 may be offset up to the total costs incurred by the Controller. Any remaining balance shall be forfeited in accordance with Sections 53895 and 53895.5. Any costs incurred by the Controller in excess of the forfeiture imposed shall be a charge against any unencumbered funds of the county, city, district, or redevelopment agency.

SEC. 6. Section 16582 is added to the Government Code, to read:

16582. Within the uniform state payroll system, the Controller may, for each participant, disregard errors of twenty-five dollars (\$25) or less in individual accounts receivable, if he or she has determined that time and expense will be saved in doing so.

SEC. 7. Section 3088 of the Probate Code is amended to read:

3088. (a) The court may order the spouse who has the management or control of community property to apply the income or principal, or both, of the community property to the support and maintenance of the conservatee, including care, treatment, and support of a conservatee who is a patient in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, as ordered by the court.

(b) In determining the amount ordered for support and maintenance, the court shall consider the following circumstances of the spouses:

(1) The earning capacity and needs of each spouse.

(2) The obligations and assets, including the separate property, of each spouse.

(3) The duration of the marriage.

(4) The age and health of the spouses.

(5) The standard of living of the spouses.

(6) Any other relevant factors which it considers just and equitable.

(c) At the request of any interested person, the court shall make appropriate findings with respect to the circumstances.

(d) The court may order the spouse who has the management or control of community property to make a specified monthly or other periodic payment to the conservator of the person of the conservatee or



to any other person designated in the order. The court may order the spouse required to make the periodic payments to give reasonable security therefor.

(e) (1) The court may order the spouse required to make the periodic payments to assign, to the person designated in the order to receive the payments, that portion of the earnings of the spouse due or to be due in the future as will be sufficient to pay the amount ordered by the court for the support and maintenance of the conservatee. The order operates as an assignment and is binding upon any existing or future employer upon whom a copy of the order is served. The order shall be in the form of an earnings assignment order for support prescribed by the Judicial Council for use in family law proceedings. The employer may deduct the sum of one dollar and fifty cents (\$1.50) for each payment made pursuant to the order. Any such assignment made pursuant to court order shall have priority as against any execution or other assignment unless otherwise ordered by the court or unless the other assignment is made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code. No employer shall use any assignment authorized by this subdivision as grounds for the dismissal of that employee.

(2) As used in this subdivision, “employer” includes the United States government and any public entity as defined in Section 811.2 of the Government Code. This subdivision applies to the money and benefits described in Sections 704.110 and 704.113 of the Code of Civil Procedure to the extent that those moneys and benefits are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(f) The court retains jurisdiction to modify or to vacate an order made under this section where justice requires, except as to any amount that may have accrued prior to the date of the filing of the petition to modify or revoke the order. At the request of any interested person, the order of modification or revocation shall include findings of fact and may be made retroactive to the date of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15 days before the hearing on the petition to modify or vacate the order, the petitioner shall mail a notice of the time and place of the hearing on the petition, accompanied by a copy of the petition, to the spouse who has the management or control of the community property. Notice shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing under that chapter.

(g) In a proceeding for dissolution of the marriage or for legal separation, the court has jurisdiction to modify or vacate an order made



under this section to the same extent as it may modify or vacate an order made in the proceeding for dissolution of the marriage or for legal separation.

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